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REPORTS

NOTES OF THE WEEK

Adoption by Mother of Illegitimate Child

Many adoptions of illegitimate children have taken place, the application having been made sometimes jointly by the mother and her husband, he not being the father and sometimes by the mother alone. One object of many of these applications has been to enable the infant when called upon to produce a birth certificate, to use an extract from the Adopted Children Register and thus to conceal the fact of illegitimacy. This has been of less importance since the introduction of the shortened form of birth certificate.

There are, however, other advantages conferred upon the infant by adoption, even when the application is made by the mother alone, as was pointed out by Lord Denning, sitting in the Court of Appeal in the case of *In re D. an Infant* (*The Times*, November 29). This was an appeal from the decision of a county court Judge who had refused to make an adoption order on the application of the mother of an illegitimate child. The guardian *ad litem* had reported that the child was well-cared for and that an adoption order would be in its interests, but the county court Judge had pointed out that the officer in his report had said that the mother was anxious to remove the stigma of illegitimacy from the child, and that no other reason or advantage to be gained from the proposed adoption had been advanced either by the mother herself or by the guardian *ad litem*. He held that the Adoption Act of 1950 was not designed or intended to be used simply for the purpose of removing the stigma of illegitimacy.

Lord Denning, in the course of his judgment, referred to the provisions of ss. 1 (3), 2 (1) and 12 (1) of the Act, which makes specific mention of adoption by the mother of the infant, and said that Parliament had clearly contemplated adoption in the circumstances now before the Court. He went on to point out the advantage of adoption where the question of succession to property arose, because, once adopted, the child would rank as a "child" in the full sense of the law. The child did not become legitimate, but once adopted suffered none of the disabilities which attached to illegitimacy. There was also the advantage of using an extract from the Adopted Children Register as a birth certificate. Therefore, if the mother and her home were suitable an adoption order would be for the welfare of the child.

Hodson and Ormerod, L.JJ., concurred and an adoption order was made. Hodson, L.J., said that it ought to be made plain that the Adoption Act contemplated by its very terms that the unmarried mother might well be the applicant for an adoption order. The welfare of the child must, of course, be considered.

Hearings *in Camera*

There are obvious advantages in the procedure of hearing applications for adoption *in camera*, and the general public has no particular interest in them. The only disadvantage that we can think of is that since applications to the High Court are heard *in camera* there are very few cases in which even the judgment is made available, and inferior courts have not therefore the benefit of the guidance those judgments would afford.

In the case above referred to, Lord Denning said that the Court of Appeal had in fact decided a case like the one before the Court, where a county court Judge had refused to make an order for the same reason. That was in 1957, and the Court of Appeal had sat *in camera* so that there was no report and no record of it had been traced. Had it been reported everyone concerned would have known, and the present appeal would not have arisen.

Secrecy about adoption proceedings is desirable where there would be strong and reasonable objection to the publication of facts revealed by the evidence, and sometimes when the adopters and the infant wish it to be thought that their relationship is really that of parent and child. However, there are evidently some adopters who are glad to make known to their friends

the fact that they have adopted a child, as witness an announcement recently appearing under the heading "Adoption" beneath the births in a daily newspaper.

A Very Casual "L" Driver

Although there is not the same stigma attaching to the commission of the less serious motoring offences as to offences such as stealing, it is nevertheless a serious matter for a motorist completely to disregard various laws regulating the conduct of those who drive motor vehicles on the road.

The *East Anglian Daily Times* of November 10 reports the case of a motorist who was stopped for the not very serious offence of having no lights. It then transpired that he was a learner driver who was not accompanied by a qualified driver, that he was showing no "L" plates, and that his rear number plate was not illuminated. Most serious of all, there was no insurance policy to cover his use of the vehicle.

He was duly summoned for these five offences and he may well have been agreeably surprised to find that the total fines amount to no more than £9. The report does not, of course, give any information as to his means. What is perhaps more surprising is that he was not disqualified for any period. As he showed such a complete disregard for the law it might have had a salutary effect if he had been deprived for a time of the right to be on the road so that he could have an opportunity to make himself more fully acquainted with what the law requires of motor drivers.

Sentence Plus Probation

An important principle was laid down by the Court of Criminal Appeal in *R.* v. *Evans, The Times,* December 2. It was held that a probation order should not be made against an offender at the same time as an order for detention, even though the orders were made on different charges.

In April, 1957, the appellant had been sentenced at quarter sessions to three months' detention on one charge for store-breaking, and put on probation for two years on another similar charge. In July, 1958, he was fined by a magistrates' court for larceny. Later he was again brought before quarter sessions and sentenced to borstal training in respect of the charge upon which the probation order had been made. The Court of Criminal Appeal granted an extension of time for appeal against that sentence and also against the probation order.

The Lord Chief Justice, who delivered the judgment of the Court of five Judges, observed that looking at the express words of the Criminal Justice Act, there did not appear to be anything which prevented a probation order being made on a second count instead of a sentence on that second count. But the Court was clearly of opinion that the making of a probation order in such circumstances was contrary to the spirit and intention of the Act. For quarter sessions to make a probation order in regard to the second count was really in the nature of providing for after-care. After-care might be highly appropriate, but the question was whether a probation order was the right method. Further, in the present case the probation order could not take effect until the appellant was released from the detention centre. In such a case as this it seemed to the Court that an order for detention in a detention centre and an order for probation were wholly inconsistent. The Court would quash the probation order, and substitute an order for three months' detention to run concurrently with the order made on the first count, and the result would be that the sentence of borstal training would also be quashed.

Thus, it is clear that apart from occasional instances to which Lord Parker referred where a man may be nearing the end of his national service, a probation order should not be made which cannot take effect at once, and that a probation order is not the proper method of securing after-care following a period of detention. It may well be that the law needs amendment so as to provide for after-care beyond what is already laid down by statute.

The decision does not appear to affect the practice of many courts, in what they consider suitable circumstances, of imposing a fine in respect of one offence and making a probation order in respect of another. Probation can be effective at once.

Overcrowding in Prison

The Times of December 2, reported remarks made by Salmon, J., at Kent Assizes about the case of a man without previous convictions being kept in a cell with two other men, both of whom had been previously convicted. This prison, said the Judge, had been constructed at a time when it was thought right to make prison as depressing and hard as possible. Now, fortunately, ideas had changed and one object was the reform of the individual, but, apparently because of lack of money, prisoners were confined three in a cell intended for one.

We believe that prisons are now in course of construction, and that the Prison Commissioners are adopting every possible means of getting rid of this scandal of overcrowding, which may have most unfortunate results. It must be difficult for those responsible to decide which projects are to have priority in the building programme, and there would be some outcry in some quarters if prison building was given high priority, but the amount of money involved would not, we should suppose, be so large as to make it necessary to put it low down on the list. Bad prison conditions are not likely to prove economical in the long run, because of the harmful results that are almost inevitable. We hope it will not be long before this evil is a thing of the past.

The New Towns Bill

Part I of the Bill provides for the winding up of new town development corporations in England and Wales, the disposal of their assets and liabilities and other connected matters (*e.g.*, special provision for transfer of sewerage and sewage disposal undertakings to local authorities).

Clause 2 provides for a commission for the new towns, to which the assets and liabilities of the development corporations will in due course be transferred. This clause together with sch. 1 to the Bill describes the commission's functions, powers and constitution. Under cl. 3 the Minister of Housing and Local Government is enabled to finance the commission by means of repayable advances from the Consolidated Fund. Clause 4 authorizes the payment to the commission of subsidies and grants for housing purposes and exempts the commission's houses from rent control. Clause 5 provides for the preparation and presentation to Parliament of the commission's annual report and accounts and of the Minister's account of his transactions with the commission.

Clause 6 requires the Minister, when he is satisfied that the purpose for which any development corporation was set up have been *substantially achieved* to make an order providing for the dissolution of the corporation

and the transfer of its assets to the commission. The effect of such an order is indicated in sch. 2 of the Bill. Clause 7 enables the Minister to make separate orders, transferring any sewerage undertaking which has been carried on by a development corporation to the appropriate local authority either before or after the corporation has been wound-up.

Part II, which applies to Scotland as well as to England and Wales, amends a number of Acts which apply to development corporations.

Clause 10 raises from £300 million to £400 million the total amount which may be advanced to all development corporations in England and Wales and Scotland for capital expenditure. Clause 12, *inter alia*, enables the Minister to reduce or withhold housing subsidies if a development corporation sell a subsidized house or lease it for a term of more than one year. Clause 12 gives development corporations a general power to make financial contributions towards the provision of amenities in their towns. As regards the financial effects of the Bill charges on the Consolidated Fund will arise in respect of the increase from £300 million to £400 million in the provision for repayable advances to meet capital liabilities of the development corporations, including such liabilities taken over and discharged by the commission (cl. 10 (1)).

Other charges will accrue in respect of the repayable advances not to exceed £5 million and £1 million respectively, which may be made to the commission to meet its own capital expenditure and to meet revenue deficits (cl. 3 (1) and (2)).

Any surpluses achieved by the commission will accrue to the Exchequer (cl. 2 (7)).

Complaining to the Member

It is the prerogative of an elector to write to his member of Parliament if he has a grievance or thinks he has a grievance against a government department. The normal practice is for the member then to write a personal letter to the Minister or the Parliamentary Secretary, who speedily gets the necessary information from the department, so that this can be passed on to the complainant. Action of this kind helps to keep government officials "on their toes." Sometimes the member takes the opportunity of asking a question of the appropriate Minister in the House of Commons but as Earl Attlee has shown arising from the Strauss privilege case the practice of writing to the Minister is much the better plan. From his long experience as a member of the Committee of Privileges he deprecated a member cluttering up the Order Paper with questions about individual cases.

An entirely different position arises, however, when a member of Parliament is asked to help a constituent with a complaint against the local council. Many members spend time at the weekends interviewing people in a local office. This does at least keep the member in touch with local opinion but it should be quite unnecessary to trouble him with matters of local government. It may be thought that the town clerk will take more notice if he receives a complaint through the member of Parliament but there is no reason why he should do so. The proper course is, as some members do, to tell the person making the complaint that he should take the matter up with his member on the council if he feels that he is not getting proper attention from the officials.

Putting London Boroughs in the Picture

The London County Council (General Powers) Act, 1958, provides amongst other things for decentralizing some functions of the county council. By s. 15 its powers and duties with regard to dangerous and neglected structures are transferred to the councils of metropolitan boroughs, and by s. 18 its powers and duties under s. 38 of the Shops Act, 1930. These are small steps but in the right direction. More important provisions in the same part of the Act of 1958 provide for delegation to borough councils of certain powers of the county council, but this is only to be done with the consent of the Minister of Housing and Local Government. The functions which may thus be delegated are those under part III of the Town and Country Planning Act, 1947, except those relating to advertisements, and any of the functions of the county council under the Building Acts, 1930 to 1939. This power of delegating may mean much or little. Under the London Building Acts since that of 1894, a process has gone on of creating centralized machinery for the control of London building and this process was not interrupted when the borough councils came into existence in 1899. By 1930 when the new consolidation of that year was enacted, as a prelude to the first serious attempt to modernize the London law of building, a great vested interest had grown up in the old methods of control. This is still firmly ensconced, although the publication we reviewed at p. 770, *ante*, shows some willingness to come into the open about the way the methods of control are worked. With the law as it is, it seems problematical whether at the present day much can be done towards giving effective powers to borough councils, in relation to building, similar to those exercised by local authorities elsewhere. In any event, it would be undesirable to divide the legislative power, and it is only in the execution of the law that there can be delegation. In most respects the law throughout the county should remain the same, and if any steps can be taken to bring it up to date these should be taken at the centre.

So also, it is not all functions under part III of the Town and Country Planning Act, 1947, which can be properly delegated, and it must in candour be admitted that the office of the county council is not so remote (at least geographically) from ordinary people as the offices of provincial county councils. It is not necessary even now to send a brick for 50 miles to obtain planning approval of its colour, as it may be outside London. We hope, nevertheless, that a real attempt will be made both by the county council and by the Minister, to put local authorities within the county in a position to deal with as many as possible of the day-to-day problems in planning and in building which beset the ordinary property owner.

Administrative Law in the Commonwealth

The law on some matters is very similar in other parts of the British Commonwealth but in many respects there are differences in local legislation. A recent issue of *Public Administration*, the journal of the Australian regional groups of the Royal Institute of Public Administration, contains an article by Professor Geoffrey Sawer of the Australian National University on "Judicial decisions affecting public administration." A Canadian case (*Dionne* v. *Montreal*) referred to a Montreal byelaw prohibiting the distribution of hand-bills, etc., in the streets and complaint was made at the distribution of leaflets by a candidate for federal office. The byelaw was held to be invalid on federal constitutional grounds and also as *ultra vires*. Another byelaws case was *R.* v. *Thomson* when the Ontario Court of Appeal held

invalid a byelaw prohibiting the keeping of pigs in a particular area. The main grounds for the decision appeared to be that the byelaw had been aimed at a particular individual. In referring to another Canadian case (*Spiers* v. *Toronto Township*) Professor Sawer suggested that this disclosed the poverty of the principles which administrative law has available for dealing with the legislative activities of substantially executive authorities. The plaintiff had endeavoured for some time to obtain the necessary permission to build a residence. Owing to a combination of his own dilatoriness and official mistakes this process was still continuing after the municipal council had begun to alter the relevant byelaws so as to prohibit the building of residences in the area concerned. The plaintiff had not been warned that this was happening and before the final hearing of the application the amended byelaw had been made. The plaintiff claimed that the local authority was estopped from relying on its new byelaw or that the byelaw should be regarded as inapplicable to him on the ground of "bad faith" but the Ontario High Court held against him. In another Canadian case (*Union Gas* v. *Sydenham Gas*) an administrative board had the duty of deciding whether a public utility company should be permitted to instal a natural gas system. Under the general law applicable to such matters the criterion was whether it was for the "public convenience and necessity." The Supreme Court held that this was not a question of law or of fact, but of opinion on which it was not competent for the court to decide.

A New South Wales case of a very different kind was *re Burnett*. This related to a public servant who had been convicted of disgraceful and improper conduct in writing to a member of Parliament making allegedly false allegations about the Service. The Crown Employees Appeal Board reversed this decision on the ground that communications from a public servant in such circumstances were privileged and could not be treated as a breach of discipline. Another New South Wales case (*Grafton* v. *Riley Dodds*) dealt with the distinction between "non-feasance" and "misfeasance." The plaintiff complained that a local authority had created a trap by removing all but one of the trees on one side of a road. After dark there were no street lamps, reflectors or other aids to help motorists. During rain the plaintiff drove into the remaining tree. This was held to be "misfeasance." In a further New South Wales case (*Waverley Council* v. *Nagle*) the plaintiff suffered damage by falling into a drainage hole in the street. There was some evidence that the council's servants had removed the sump cover and not put it back; but it was also possible that this could have been done by a stranger. It was held that the absence of a fastening on the sump cover constituted negligence independently, as these heavy articles are not normally provided with any sort of lock.

WITNESS' EXPENSES

By F. G. HAILS

The *Daily Telegraph* of September 18, 1958, carries an interesting report of a witness who, having arrived too late to give evidence on a summary trial at a magistrates' court, sued the prosecutor, a police superintendent, for loss of earnings amounting to £4 14*s*. 6*d*. The plaintiff lost his claim, the county court registrar who heard it ruling that a witness is not entitled in summary cases to loss of earnings. The reasons for this judgment are not set out in the report, but there is no reason to doubt their soundness, although it is interesting to remember that the Magistrates' Courts Act, 1952, s. 77 (3) (*b*) provides that, after a witness summons has been served and the witness fails to attend, a warrant to compel his attendance cannot be issued unless the court is satisfied that he has been served with the summons and that "a reasonable sum has been paid or tendered to him for costs and expenses."

It is also interesting to consider the position of a witness in a summary case as regards the amount of his expenses: he is not served with a witness summons, he does appear, and then it is usual for the prosecution to ask for an order to be made against the defendant, when convicted, for payment of costs. These include, often, whatever the witness chooses to ask. But, if the man who claimed £4 14*s*. 6*d*. costs and expenses in the case to which we have referred had been called to give evidence in any indictable offence, from capital murder downwards, he would have been entitled to claim from public funds, under the Witnesses' Allowances Regulations, 1956, a loss allowance of not exceeding 30*s*. a day, or if away from his place of residence, business or employment for less than four hours, a sum not exceeding 15*s*. unless he lost more than that sum. His fares would have been second class rail fare, or if he had travelled by private car 2*d*. a mile, unless the court was of the opinion that there was a substantial saving of time, in which case it could have allowed him at the rate of 6*d*. His maximum allowance, including subsistence at the full rate of 7*s*. (here again reduced by half if he were away from home for not more than four hours) would have been:

	£	*s*.	*d*.
Loss of earnings, etc.	1	10	0
Subsistence		7	0
Mileage (quoted as 42) ...	1	1	0
	£2	18	0

It seems fantastic that a witness to a serious indictable offence should receive less than one who attests to something not so grave in the eyes of the law, but the situation is even more Gilbertian when consideration is given to those offences which are either summary or indictable, under the Magistrates' Courts Act, 1952, ss. 18 or 25. One of these cases is dangerous driving: if the prosecution ask for a committal, or the accused elects to go for trial, then the prescribed amount under the Witnesses' Allowances Regulations, *supra*, will apply, but if the case is dealt with by the magistrates then there is no limit to the amount which may be asked, and which, at any rate in certain areas, will be paid by a benevolent police force even if the defendant is not mulcted.

At least one county force, to our knowledge, goes even further: in recent months a nurse, whose *employer* claimed the money for lost time, was paid out, as was an employee of Woolwich Arsenal, in spite of certificates that the employees would lose no wages. There is no justification in any witness scale known to us for such a payment, but needless to say in the two cases we have mentioned the defendant was expected to pay by the hopeful police force.

This kind of thing makes a farce of a situation which is sufficiently chaotic in any case, but the Metropolitan Police Force has adopted what seems to us to be the only practical solution, and that is to apply the Witnesses' Allowances Regulations to each claim by each witness in each case, whether summary or indictable. The result is that whether a witness is paid out of police funds, the defendant's pocket, or out of local funds, he gets the same maximum sum, and anomalies are avoided. We hope it is not too much to suggest to provincial forces that they should copy big brother's example.

Note: Since the above was written the maxima for loss of earnings have been increased to £2 for a day and £1 for up to four hours, by the Witnesses' Allowances Regulations, 1958.

RENDER UNTO CAESAR

[CONTRIBUTED]

It has been said with some reason that the Church has never been the same since it abolished the devil. When Victorian preachers reminded their congregations week by week of the fire and brimstone that was undoubtedly waiting for them, few of their listeners can have lacked an urgent sense of sin.

This awareness had singularly useful consequences. Although it cannot be claimed that the criminal law covered all known sins, Holy Writ certainly disapproved of all punishable offences which imported moral delinquency.

It was a dreadful and disgraceful affair if one was convicted of such an offence in a magistrates' court of the pre-1914 era.

There have been two divergent progressions since that time. Today there are many people who do not subscribe to any of the known Christian denominations in England. Although many of the non-Christian religions possess a strong sense of sin, there are probably more people in England today than at any other time who follow their own interpretation of right and wrong as the only ethical compass.

Whilst it is probably true that a great majority of those people possess a high degree of integrity, it is scarcely surprising if the entire lack of ancillary supports causes disastrous ethical collapses for some.

Where individuals act as judge and jury in their own cause, who is surprised if the court is biased, and the verdict unreasonable? In such circumstances business men develop a private and public morality and the "fiddle" is accepted as normal.

Pre-1914 legislators knew little of the motor car. They did not often have to distinguish between the offence that was morally wrong and clearly sinful, and the offence that constitutes a punishable act under the Road Traffic Acts.

Those who have cause to examine their consciences frequently, which is not an over popular exercise today, well know the difficulty in interpreting the fine shades that so frequently divide right and wrong.

Few motorists feel particularly guilty about parking offences and exceeding the speed limit. Many magistrates complain about "the dreadful wastage of our time caused by these endless traffic cases." How many priests would care to argue in terms of strict theology that these minor offences are in fact sins?

It is interesting to note how soon a shade of moral portent intervenes. The transition from "speeding" to "driving without due care" is often swift, unexpected and irrevocable.

When is a motorist merely well dined and wined? When is he a danger to life? The transition is often barely perceptible, but has recently engaged the attention of the Catholic Hierarchy in Australia. Driving under the influence seems to be a major problem "down under" and has caused the archbishops and bishops to remind their flocks that it is a grave sin to jeopardize the lives of other road users by driving while under the influence of drugs and alcohol.

The implications of such a warning, and the meaning of grave sin where such implications are understood will ensure that many thousands of people will think twice before committing that offence, no matter what else they do.

From the bond between "warning" and "paying heed to that warning" it is not difficult to argue that the priest can assist the law courts as efficiently and frequently as any other expert witness.

The doctor is often before the courts as a special witness to assist in the disposal of offenders. In one sense it could be suggested that the doctor is usually the prisoner's friend. He is frequently called in to show that imprisonment would be the worst possible way of dealing with a particular defendant.

The clergyman could be the court's friend, as well as the prisoner's. Personal goodness does not permit any man to indulge two standards of morality. The more that people realize this, the less chance there is of any individual appearing before the criminal courts.

The propagation of goodness is the clergyman's job. It is very rarely that a solicitor can do more than try to rectify what has gone wrong, after the wrongdoer has been summoned to explain his actions before the magistrates. There is little that he can do to prevent his clients doing wrong. Although piety must remain a matter for the practitioner's private life, it can certainly equip him for coping with his job and putting it in its proper perspective.

How can the cleric offer his goodness to the courts in a manner that is acceptable? If he is a strict though kindly father to his flock there is a great deal to be said for a minister of religion taking his place upon the bench, thereby reminding many who have forgotten the fact, that it is a priest's job to be the custodian of public morals in all spheres.

Clerics of a different temperament could well serve in a way which has been little explored as yet.

This is an age when more and more educated people are finding their way into courts for sheer dishonesty. An intelligent use of case histories, coupled with a close liaison with probation officers could tell the clergyman much about the causes of crime in his own parish or district.

High among the causes must be the sharp practices that lead to one morality for private life and another for a business or political career. The easy money that comes through fiddling an expense account can well lead to a desire for greater prizes that can only be reached by taking greater risks.

These are things that the priest can study in his local court and take back to his parish as subjects for sermons or discussion groups.

Undermanned police establishments make it more and more difficult for a chief constable to deal with the offences occurring in his area. It is inevitable that much minor crime must go undetected as well as unpunished. The priest can assist in the prevention of crime by turning more and more people's minds to worthier objects in life.

His co-operation and assistance should surely be sought at every possible level. He could be an active agent in upholding and improving the law.

N.A.B.

By **R. KENNETH COOKE, O.B.E.**

"I'm having to live on the National Assistance because he won't pay, Sir," is a frequent and sometimes tearful complaint when a defaulting husband is before the court for maintenance arrears. How often do magistrates stop to think what that means in terms of the taxpayer and national expenditure?

The report of the National Assistance Board for the year ended December 31, 1957, gives some interesting information about this drain on the national resources.

In discussing the extent to which liable relatives discharge their obligations to contribute to the maintenance of persons on assistance, either in compliance with a court order or to honour an out-of-court arrangement, the report speaks of three main classes: separated wives, divorced women with dependent legitimate children and mothers of illegitimate children.

The first class is sub-divided into those under and those over 60 years of age. It is pointed out that some 40 *per cent.* of the women who describe themselves as separated wives are over the age of 60, and many who have lost all trace of their husbands for years are probably widows. Moreover, very few separated wives over 60 years have dependent children, whereas the existence of children among the younger age groups is an important factor and frequently accounts for the fact that women seek assistance instead of maintaining themselves by employment.

There are 41,000 separated wives under 60 years of age in receipt of national assistance. Over 18,000 of these women have been awarded court orders, and in only 8,300 cases are the orders being completely or substantially complied with. In another 4,300 cases irregular payments are made. The average weekly amount of these 12,600 court orders is £2 2*s.* and in 9,000 of these cases in England and Wales the husband's payment is made direct to the board, by the clerk of the court, on the wife's authority. The woman then receives a regular weekly national assistance allowance and the payments made by the husband are treated as an appropriation in aid of the board's expenditure. In this way the woman is assured of a regular income notwithstanding any irregularity in the husband's payments.

For a variety of reasons no payment whatsoever is received in respect of 5,600 court orders.

About 4,200 separated wives under 60 have entered into out-of-court agreements. In 75 *per cent.* of these cases the agreement is being honoured fully and regularly, or nearly so, and in 14 *per cent.* of them irregular payments are being made. In only about 10 *per cent.* of the cases is no payment being made. The average weekly amount due under these out-of-court agreements is £1 15*s.*

The remaining 18,000 separated wives under 60 have neither court orders nor out-of-court agreements. This is because the husband cannot be traced or is known to be abroad, he is unable to make any payment, or, as in about 3,300 cases, the wife has by her own conduct forfeited her right to claim upon her husband.

There are 26,500 separated wives over 60 years of age being assisted. Court orders are in force in about 6,000 cases and only half of them are being substantially complied with. In a further 1,000 cases irregular payments are being made. The average weekly payment under these court orders is £1 3*s.* and about one-half of the payments are made direct to the board by the clerk of the court, to whom the woman has given the necessary authority.

Nothing is being received in respect of 2,000 court orders in this age group.

About 1,800 separated wives over 60 have entered into out-of-court agreements and payments are being properly made in 80 *per cent.* of the cases. Irregular payments are received in a further 10 *per cent.* of the cases. The average weekly payment in these agreement cases is about £1 6*s.*

There remain over 18,000 separated wives over 60 years of age, who have neither court order nor out-of-court agreement. In a high proportion of these cases the separation took place long ago and very often all trace of the husband has been lost for years.

Some 5,300 divorced women with dependent legitimate children receive assistance. Nearly 4,000 of them have court orders or have entered into out-of-court agreements with their former husbands. In 60 *per cent.* of these cases the former husband is honouring his obligations correctly and irregular payments are received in 20 *per cent.* of the cases. There is a further 20 *per cent.* in which no payment is received from the former husband. The average weekly amount payable under a court order or agreement is £1 16*s.*

There are 20,000 unmarried mothers receiving national assistance. About 4,000 have obtained affiliation orders and in nearly 70 *per cent.* of the cases the order is being complied with. In 16 *per cent.* of the cases irregular payments are received, leaving a balance of 14 *per cent.* in which the putative father has ignored the order of the court. The average weekly amount of these affiliation orders is £1.

Three thousand mothers of illegitimate children have out-of-court arrangements for payments by the fathers, and in 90 *per cent.* of these cases the agreement is being substantially honoured. Irregular payments account for a further five *per cent.* of the cases. The average weekly amount due under these arrangements is a little under £1 4*s.*

Nearly 13,000 unmarried mothers have neither obtained an affiliation order nor made out-of-court arrangements. In many cases the putative father cannot be traced, and in others the woman is promiscuous.

Payments by liable relatives, whether under a court order or by an out-of-court arrangement, may be either (1) received by the woman herself and taken into account in assessing her needs, or (2) as already explained, received by the board, the woman being assisted without regard to any payments the husband (or former husband) or putative father may be making and, where appropriate, authorizing the board to collect the money from the court as an offset against the assistance she receives.

In this latter category there are 186 cases in which the clerk to the Rotherham magistrates makes payments direct to the board on the authority of the woman concerned, and during 1957 £6,502 0*s.* 2*d.* was returned to the national purse in this way.

The report gives a table showing the over-all position as follows:

	Annual rate of assistance expenditure	Annual value of payments received by applicants (*see* (1) above)	Annual value of payments received by the Board (*see* (2) above)
	£	£	£
Separated wives (67,500)	8,325,000	770,000	
Divorced women with legitimate children (5,300)	890,000	130,000	1,067,000
Mothers of illegitimate children (20,000) ..	2,875,000	288,000	
	£12,090,000	£1,188,000	£1,067,000

These figures emphasize the need for magistrates to insist upon maintenance and affiliation orders being paid promptly and fully. The enforcement of arrears should be pursued as rigorously as the means of the defaulter will permit.

There is another important point to remember.

National assistance is a cash allowance calculated by taking the appropriate figures from the scale of allowances, adding an allowance for rent in appropriate cases, and deducting the amount of any resources available to the applicant.

Let us take as an example the case of a separated wife living in the matrimonial home with the two children of the marriage, aged eight and four years respectively. Her rent is 15*s.* per week. She has a maintenance order against her husband for a weekly payment of £2 for herself and 15*s.* in respect of each child. Her total income is £3 10*s.* per week, plus 8*s.* family allowance for the second child.

Her claim for National Assistance will be calculated as follows:—

	£	s.	d.
Allowance for herself, a householder living alone	2	5	0
Allowance for child aged eight years		17	0
Allowance for child aged four years		14	6
Rent allowance		15	0
Total Allowances	4	11	6
Deduct—	£	s.	d.
Amount of court order	3	10	0
One family allowance for second child		8	0
	3	18	0
N.A.B. weekly payment		13	6

Whenever the means of the husband permit it is important that he should be required to make payments under a court order of an amount at least equal to the national assistance scales. If this is not done the State must pay the remainder when the wife submits her claim for national assistance.

It is a plain truth that a maintenance order against a husband for less than the national assistance allowance is a sentence upon the community to find the balance.

At a recent domestic court in Rotherham the wife obtained an order against her husband on the grounds of desertion and neglect to maintain. She was not employed and there were no children of the marriage. Although the husband earned £8 per week, the magistrates ordered him to pay only £1 5*s*. weekly for the maintenance of his wife.

I wonder if the court realized that the wife immediately became entitled to a payment of £1 per week from the national assistance board, together with a weekly rent allowance?

Why should the community as a whole be forced to maintain this wife when the husband can clearly afford to do so, and would be doing so had he not caused the marriage to break up?

MOBILE SHOPS

By H. C. WILKINSON, *Senior Assistant Solicitor, Harrogate*

Ever since the coming into vogue of the converted vans and lorries known as mobile shops, it has been appreciated that their owners have numerous advantages over the owners of ordinary shops. The former can go out and search for his customers rather than having to wait for his customers to come to him. Compared with those of an ordinary shop, the overheads of a mobile shop are negligible, even non-existent, and the mobile shop owner pays no rates or schedule "A" tax on his vehicle.

Now, in addition to their other advantages, the mobile shop owners have in their favour the decision of the Divisional Court in the case of *Stone* v. *Boreham* (1958) 122 J.P. 418; [1958] 2 All E.R. 715, which gives them the advantage of being able to continue to trade when all ordinary shops must be closed. The case itself relates only to Sunday trading, but it appears that the decision might equally be applied to hours of closing, both on weekly half-holidays and on normal days.

The law on the closing of shops on Sundays is contained in part IV of the Shops Act, 1950, and the sections which are important in this respect are ss. 47 and 58. Section 47 enacts that subject to certain exceptions, every shop shall be closed for the serving of customers on Sunday. The head-note to 58 reads "Extension of foregoing provisions of part IV to retail trading elsewhere than in shops," and the section itself enacts that the provisions of part IV (with certain exceptions) shall extend to any place where any retail trade or business is carried on as if that place were a shop and as if the person carrying on business were the occupier of a shop. To the uninitiated, this would seem to imply that no one can trade when shops are legally obliged to remain closed and indeed it is almost certain from the wording of the head-note, that this was the intention of the draftsman of the Act. The courts have not applied the Act in this way, however, and therein the interest lies, not only to the shops inspector and shopkeeper, but also to the student of judicial interpretation of the wishes of Parliament.

Eldorado Ice Cream Co. Ltd. v. Clark (1938) 102 J.P. 147; [1938] 1 All E.R. 330, was the first English case on the subject, decided at a time when ice cream was first being sold from box-tricycles. Here ice cream was sold on a Sunday from a box-tricycle which was, of course, constantly on the move. It was contended on behalf of the prosecution that a box-tricycle was a place where retail trade or business was carried on, but the Court said, "It is essential that the place where the employment is carried on must be either a shop or premises akin to a shop so as to be a place within the meaning of the section. . . . One must find premises where retail trade or business is carried on, premises which are open for the serving of customers. The box-tricycles are not premises or a shop or a place. The box-tricycle is part of a moveable and peripatetic apparatus by means of which sales are enabled to be made at every sort of point on the streets and roads over a large area—no fixed position, no fixed locality, no identifiable place." Thus the judicial view of the box-tricycle shop. At this time there were no mobile shops as we understand them today—except possibly in some country districts—and when they first became popular in towns after the war, many of their owners were under the impression that they were bound by the law relating to closing and Sunday trading in the same way as ordinary shops.

In *Stone* v. *Boreham*, however, the facts were that the respondent, on a Sunday, sold a packet of tea from a motor-van equipped as a mobile shop. At the time of the sale, the van was standing on the public highway. The Divisional Court held themselves bound by the *Eldorado* case, and Lord Goddard, C.J., giving judgment, said, "I cannot hold that a retail trade or business is carried on in a mobile shop. At a mobile shop no doubt retail sales are made, but that is different from saying that a retail trade or business is carried on there. A man carries on business from an address. I do not think that the words in the sections apply to a mobile van of this sort."

Whilst the *Eldorado* case had made the law on the box-tricycles themselves, it had left undecided the question whether the piece of ground upon which the bicycle stood was a "place" within the meaning of the section. In reply to this contention in the later case, Lord Goddard said, "It seems to me that that is not a place where the respondent had set up a place of business or had established himself as, for example, people establish themselves nowadays at the side of a road on Sundays by putting out a table and selling flowers or fruit . . . We must try to construe these matters in a way which the public can understand. *Eldorado Ice Cream Co. Ltd.* v. *Clark* seems clearly to decide that a moving vehicle such as a tricycle is not within the provisions of the Act. It would be wholly artificial to hold that although tricycles are not within the Act of 1950, the place at which

a tricycle comes to stand is within the Act." With respect, it is submitted that the Court could have come to no other conclusion. The Act is a criminal one and therefore must be construed strictly.

The anomalies which have arisen with regard to this peculiar type of shop, if unchangeable by case-law as they certainly are at present, seem to call for statutory rectification in the form of an amending Act, as was indeed suggested by Lord Goddard. Perhaps the time has come to abolish closing hours provisions altogether with suitable safeguards for assistants. If not, then all shopkeepers, whether mobile or otherwise, should surely be equal before the law.

OTHER THOUGHTS ON LOCAL GOVERNMENT RE-ORGANIZATION

[CONTRIBUTED]

The writer of the article on p. 731, *ante*, raises some matters of principle which at least deserve consideration. We are so embued with the idea that we have the best local government in the world—and in fact often think that others should copy us—that we are apt to imagine that because something has been good in the past it is necessarily good for ever. The aim of the re-organization contemplated by the Local Government Act, 1958, is to ensure that each area has sufficient resources to pay for its own services and to employ qualified staff; and then to give them freedom as to how they should spend the money at their disposal from rates and government grants. Further, members of local authorities must be made to feel that they have responsible jobs to do. Many men and women who would make excellent councillors have been lost to local government because they have felt that they were mere cyphers carrying out the policies dictated by Whitehall.

Is there then any substance in the arguments put forward for the transfer of services such as the police and education to the state? Since the passing of the Metropolitan Police Act, 1829, the general control of the police in the metropolitan police area, approximately 15 miles in each direction from Charing Cross, has been a governmental responsibility. This extends to parts of Berkshire, Essex, Kent and Surrey. It can be argued that what is satisfactory for part of a county can be equally satisfactory for the whole county. So it may be asked why should there be any county or borough police at all.

From ancient times, those responsible for preserving the peace have been local officers. Soon after the passing of the Act of 1829 it became the statutory responsibility of the boroughs and in the counties, the justices—later replaced by the standing joint committee—to appoint the police outside the metropolitan area. The system is very different in many other countries. In France the central government has complete jurisdiction over the police in some of the larger cities but this is a local responsibility in most of the country. The danger to be avoided is the creation of what is called a " police state " where there may be a risk of the political use of the police forces. This is a danger which must be watched. But is there a danger? Only a close study of the subject could show. In many parts of the British Commonwealth the resources of the local authorities are small and there are vast areas with no effective local government. So it is inevitable that the police should then be the responsibility of the state or the province. But why change a system here which has been found to work well? Surely there is no need to transfer these functions to the octopus of central bureaucracy unless it can be shown conclusively that there are many criminals at large who are evading punishment because the police are inefficient. But the experience of London does not seem to show that under Home Office control the police are more efficient there than in the rest of the country.

Turning to education surely this is essentially a matter in which local people should be intimately concerned. The main argument adduced for transferring education to the government is that the cost is crippling to local government. It is not right, however, to say the total cost will be a local charge in future. A not inconsiderable part of the new general grant will of course be in respect of education. It is rather absurd to suggest that if a service gets big it is too big for local government. Are local authorities thought to be sufficiently competent to run the small services and not competent to run the bigger services? Are the school inspectors appointed by the Minister of Education to be turned into executive officers with local advisory committees having no responsibility? Admittedly local education authorities are controlled very closely by the Ministry of Education especially in regard to finance. But under the new system they will have more freedom and it should be easier for the local people to get the form of education they want and for which they are prepared to pay. The new system must be given a fair trial.

Now turning to the services which it is suggested should be transferred from the county councils to the district councils obviously the main idea of the writer is to abolish the county councils. They are said to be too remote. But is a county councillor representing a borough any more remote from his constituents than a council member for a ward in a large county borough? The services suggested for transfer are those which can in essence only be provided for wide areas or by authorities having wide resources. Is it thought that each district should have its own parish workhouse, as centuries ago, or a small children's home or is the district council to have responsibility for welfare and no tools to do its job? Is it to go to the county council when a child is homeless or an old person in need for institutional care? One can imagine the worries of the rural clerk under such a system. But I thought the county councils were to disappear. Anyone with real understanding of the fire and ambulance services knows that the reason for their efficiency is that they generally cover wide areas. Even some of the small county boroughs are too small for these purposes. There is plenty of evidence that costs have been kept lower and efficiency increased by these services being operated over reasonably wide areas. Think for instance of the value of the radio control of ambulances which is proving such a success. Consider the costliness of modern fire fighting appliances and the need for highly trained staffs.

But finally so as to give local authorities a responsible job it is suggested that the management of hospitals should be their responsibility. The transfer of the hospitals to the state has been of enormous advantage to many of those who have to seek skilled hospital treatment. Admittedly the facilities vary. Admittedly in some parts of the country the hospital is too remote. Sometimes there are long delays in getting admission. But the standard of the care and treatment available is very much better than under the old system, especially for those who were not in the area of a large metropolitan hospital. Anyone who has made even a cursory study of the reports of the Ministry of Health must agree that patients requiring really skilled treatment have benefited enormously. It may, however, be the idea of the writer that the hospitals should still be a governmental

responsibility and the total cost borne by the national Exchequer but that they should be administered by the local authorities. Can it be seriously argued that any government would give the local authorities the responsibility for running the hospitals if the government was responsible for the cost?

Would the large teaching hospitals ever agree to go over to local authorities? Would the medical profession agree? All these points were fought out when the new system was created and time has shown that the system works better than many people anticipated. But it would certainly be an advantage if local authorities were given a greater representation on the hospital committees at the various grades and if the very useful schemes of hospital friends were extended. Further, would local authorities ever want to be responsible for running a service in which they had no financial interest? No, do not alter the system which has passed the initial test of the first 10 years.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Hilbery, Cassels, Barry and Paull, JJ.)

R. *v.* EVANS

December 1, 1958

Criminal Law—Sentence—Two offences—Probation order in respect of one—Detention in detention centre in respect of the other.

APPEAL against sentence.

The appellant, Raymond Frederick Evans, aged 18, pleaded guilty in April, 1958, at Surrey quarter sessions to an offence of storebreaking and larceny and also to an offence of storebreaking with intent to steal. In respect of the first he was sentenced to three months' detention in a detention centre, and in respect of the second he was placed on probation for two years. In July, 1958, he was convicted at Wimbledon magistrates' court of larceny from a gas meter and was fined. On July 28, 1958, he was brought back to Surrey quarter sessions to receive sentence for the offence of storebreaking with intent for which he had been placed on probation and was sentenced to Borstal training.

Held: that, though the express language of the Criminal Justice Act, 1948, did not forbid such a course being adopted where there were two separate offences charged in separate counts, the making of a protection order in such circumstances was contrary to the spirit and intention of the Act, and the Court must, therefore, quash the protection order and substitute for it an order for detention in a detention centre for three months, to run concurrently with the order on the first count. In the result, as the sentence of Borstal training had been imposed in respect of a breach of the protection order and as the protection order had been quashed, the Borstal sentence must also be quashed.

Counsel: *P. A. Bruce*, for the appellant; *H. J. Leonard*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Parker, C.J., Cassels and Barry, JJ.)

R. *v.* CHANDOR

December 2, 1958

Criminal Law—Sexual offence—Child—Alleged series of assaults by schoolmaster on several pupils—Summing up—How far succession of cases may be considered in determining truth of one incident.

APPEAL against conviction.

The appellant, a schoolmaster, was convicted at Croydon quarter sessions on five charges of indecent assault on boys and was sentenced to concurrent terms of six months' imprisonment. The alleged offences took place on five occasions between May, 1956, and June, 1958, and related to three different boys aged between 13 and 15. The appellant's defence was that none of the alleged incidents ever took place. With regard to an alleged offence against one boy at a particular place in the Lake District, the appellant's case was that he had never met the boy at that place at all; with regard to other alleged incidents, his case was that he had been in the company of the boy at the particular time and place where the offence was alleged to have been committed, but that nothing in any way indecent had occurred. The recorder, in summing-up, directed the jury on the basis of a passage in the judgment of the Court of Criminal Appeal in *R.* v. *Campbell* which stated that in cases of alleged sexual assaults on a number of children, where the evidence of each child dealt only with the assault on himself or herself, "a jury may be told that a succession of these cases may help them to determine the truth of the matter provided they are satisfied that there is no collaboration between the children to put up a false story": *see* 120 J.P. 362. He had previously told the jury that there was no corroboration in any of the cases and had given them the appropriate warning. The appellant appealed on the ground that the direction of the recorder amounted to a misdirection.

Held: that the passage in *R.* v. *Campbell* mentioned was not to be regarded as being of universal application, and, though there were many cases in which evidence of a succession of incidents might properly be admissible to help to determine the truth of any one incident (*e.g.*, to prove identity, intent or guilty knowledge, or to rebut a defence of innocent association), evidence of a succession of incidents could not be relevant where the defence was that the incident in question never took place at all. There had, accordingly, been a misdirection in law, and the appeal must be allowed and the conviction quashed.

Counsel: *McKinnon, Q.C.*, and *D. A. Hollis*, for the appellant; *MacManus*, for the Crown.

Solicitors: *Wilders & Sorrell; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT COMMISSION FOR ENGLAND

The Local Government Commission for England have appointed Mr. J. D. Jones, an Under Secretary in the Ministry of Housing and Local Government, to be the secretary of the Commission.

The Commission have been appointed under the Local Government Act, 1958, to review local government areas in England outside Greater London. In the conurbations, they will be concerned with the whole structure of local government and elsewhere with changes in the status and boundaries of administrative counties and county boroughs. They are now considering the order in which areas of the country will be comprehensively reviewed. Before deciding which parts of the country to take first, the Commission have written to local authorities asking them to say by December 16 whether they consider the need for review in their part of the country to be particularly urgent.

Inquiries and correspondence for the Commission should be addressed to the Secretary, Local Government Commission for England, Sanctuary Buildings, 16 Great Smith Street, London, S.W.1.

LAW SOCIETY FINAL EXAMINATION

November, 1958

[We are obliged to the Law Society for permission to reprint the Questions for the Final Examination, as set out on November 5, 1958—2.30 to 5.30 *p.m.*].

LOCAL GOVERNMENT LAW AND PRACTICE

(*Questions* *1, *2 *and* *3 *are compulsory*)

*1. The Barset rural district council resolve, in 1958, to pay the clerk of the council an honorarium of £200 in respect of additional work by him between 1952 and 1956 in connexion with the council's housing scheme. Is this payment legal and how, if at all, can it be challenged?

*2. The Barchester borough council have power under a local Act to license confectioners. The Act gives a complete discretion to the council whether to issue or renew a licence or not. The borough council make a compulsory purchase order for educational purposes on certain land owned by Henry, a confectioner. Henry resists the order, and it is not confirmed. Without giving a reason, the borough council refuse to renew Henry's confectioner's licence. Advise Henry.

*3. In what circumstances may an elector cast his vote at a local government election otherwise than by his personal attendance at the polling station?

(*Attempt seven and no more of the remaining questions*).

4. The Orley parish council would like official car parks to be instituted in a field which the owner is prepared to sell for the purpose and on a wide portion of the highway. How can this be done?

5. What are the procedures laid down in the Statutory Instruments Act, 1946, for the bringing of statutory instruments before Parliament?

6. John is a member of the Barset rural district council and of the Orley parish council, but wishes to resign from both. How can he do so? How will his successor be appointed in each case?

7. The Barchester borough council wish to sell or lease some land belonging to them. Advise them.

8. Can a rural district council oppose a Bill in Parliament? If so, in which circumstances?

9. What control has the Minister of Health over the qualifications, appointment, salary and tenure of a borough medical officer of health?

10. William is accused of selling adulterated flour. What authority will carry on the prosecution, and what defence is open to him on the assumption that he admits selling the flour and that it was in fact adulterated?

11. What are the differences between the procedure under s. 150 of the Public Health Act, 1875, and that under the Private Street Works Act, 1892?

12. Thomas is an old person in need of care and attention. What authority, if any, is responsible for providing it, and on what terms? Would your answer be different if Thomas' need of accommodation was caused by the flooding of his house?

THE PRACTICE OF MAGISTRATES' COURTS, INCLUDING INDICTABLE AND SUMMARY OFFENCES; MATRIMONIAL JURISDICTION, BASTARDY, JUVENILE COURTS, TREATMENT OF OFFENDERS, CIVIL JURISDICTION, COLLECTING OFFICERS' DUTIES, THE ISSUE OF PROCESS, EVIDENCE IN CRIMINAL CASES, AND LICENSING.

(*Questions* *1, *2 *and* *3 *are compulsory*).

*1. Section 17 (1) of the Larceny Act, 1916, provides: "Every person who being a clerk or servant or person employed in the capacity of a clerk or servant . . . fraudulently embezzles the whole or any part of any chattel, money or valuable security delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, shall be guilty of felony." Draw a warrant for the arrest of a cashier charged with embezzlement of £100 from his employers, using imaginary particulars.

*2. The Cross Keys, a fully licensed house, was destroyed by enemy action in 1941 and thereafter the licence was placed in suspense. The owners now desire to rebuild the premises. What steps should they take to restore the licence to full force?

*3. Justices whom you advise have stated a case in respect of a prosecution where the proceedings were dismissed. It is learned that the defendant does not propose to be represented on the appeal. The justices are anxious that the grounds for their decision are fully expressed at the Divisional Court and suggest that counsel be engaged to appear on their behalf. How would you advise them?

(*Attempt seven and no more of the remaining questions*).

4. Shaw is charged with using a motor car on a road without there being in force in relation thereto a policy of insurance in respect of third-party risks. On the hearing, a constable called for the prosecution seeks to give evidence regarding the contents of a certificate of insurance produced to him by the defendant. Shaw's solicitor objects that no notice to produce the certificate has been served by the prosecutor. Is this objection valid? As the case proceeds, questions arise regarding the construction of an insurance policy issued to the defendant. His solicitor desires to put in a letter from the insurance company concerned confirming that they held Shaw covered against third-party risks at the relevant date. Is such letter admissible?

5. Henry (aged 25 years) is convicted at a magistrates' court of shoplifting. He has not been previously convicted. The justices are contemplating committing him to prison for three months. What advice should they receive?

6. Joan, having given birth to an illegitimate child, entered into an agreement under seal with James, the putative father, whereby he paid to her £500 which Joan agreed to accept in full settlement of all claims in respect of the maintenance of the child. A few months later, Joan makes a complaint against James under the Affiliation Proceedings Act, 1957. What effect, if any, should be given to the agreement on the hearing of this complaint?

7. Williams and his wife are living apart following a separation order made in a magistrates' court. Mrs. Williams commits adultery with one Roberts. Williams, after learning of this, visits his wife and has intercourse with her. Subsequently, Williams applies for discharge of the separation order on the ground of her adultery. Mrs. Williams pleads that such adultery was condoned by the act of intercourse. Should this plea succeed?

8. At a meeting of justices for each petty sessions area held in October, 1958, it was necessary to appoint a juvenile court panel for that area. What legal requirements should be borne in mind in selecting the persons for appointment and by what procedure is it determined who shall sit as chairman of ensuing juvenile courts?

9. Regulation 104 of the Motor Vehicles (Construction and Use) Regulations, 1955, provides that if any person uses or causes or permits to be used on any road a motor vehicle in contravention of specified regulations he shall for each offence be liable to a fine not exceeding £20. A police officer ascertains that in contravention of a regulation so specified, a motor lorry is being used on a road with inefficient brakes. The vehicle is being driven by Evans who is employed by Z and Company, Ltd., the owners of the lorry. Evans informs the constable that the company requires each driver to maintain the vehicle that is in his charge. What proceedings (if any) may be taken against the company?

10. Mr. and Mrs. Edwards are separated by an agreement whereby Mr. Edwards agreed that his wife should have the custody of their infant daughter Olive. Olive is 19 years of age and she desires to be married. Her mother does not consent and Olive leaves her mother's home in Bradford to reside with friends in Oxford. Olive communicates with her father, who lives in Birmingham, and finds that he is also opposed to the marriage. Olive now seeks to be married without the consent of her parents. What steps may she take to this end and which magistrates' court would have jurisdiction to deal with any application that she may make?

11. A magistrates' court imposed the following fines in the month of September:

Thomas—riding bicycle without light	£1
Lawson & Co., Ltd.—breach of Companies Act, 1948	£50
Robinson—larceny	£10

The following amounts were paid during the same month:

Thomas	10*s.*
Lawson & Co., Ltd.	£50
Robinson	£5

How and when should the clerk to the justices account for these amounts?

12. Martin, aged 20 years, appears before a magistrates' court and is convicted of one offence of larceny. A report from the prison commissioners indicates that he is a suitable subject for borstal training. Nevertheless, the justices are inclined to the view that Martin should be committed to prison for a longer period than six months. What order would you advise them to make?

WITNESSES' ALLOWANCES

The Secretary of State has made the Witnesses' Allowances Regulations, 1958 (S.I. 1717 (L11), dated October 15, in force November 1. These regulations amend reg. 4 of the Witnesses' Allowances Regulations, 1955, so as to increase, from 30*s.* to 40*s.* a day, the maximum loss allowance payable under the regulation. The maximum allowance in cases in which the proviso to reg. 4 applies is increased from 15*s.* to 20*s.*

THE JUDICIARY OVERSEAS

Mr. R. C. Chagis, chief justice of Bombay and ambassador-designate to the United States, speaking at a meeting of the Bombay branch of the Commonwealth parliamentary association, said that in India the executive, the legislature and the judiciary were the triple pillars of democratic government and jointly formed the superstructure which sustained the rule of law (we quote from the *Bombay Chronicle*). Each of them, however, had a distinct function to perform within its own sphere. It was sometimes wrongly assumed that the judiciary exceeded its purview when it sat in judgment on the law—acts of the legislature or the executive. But, he said, all it did was to interpret the laws of the land as they existed. In that process it might check the excesses or correct the lapses of the other two spheres. The suggestion sometimes made that the Judges were a thorn in the side of the executive was completely misplaced. Indeed the concept of encroachment should be more correctly understood as a salutary curb on the competence and authority of the executive and the legislature. Under the Indian constitution the role of the judiciary was more important than in England where Parliament was supreme. In a parliamentary sovereignty the rôle of the judiciary was limited because it could not adjudicate on the validity of the laws. But under the Indian constitution that power had been conferred on the judiciary. There, it was the constitution that was sovereign. He urged that the appointment and conditions of services of certain branches of the judiciary for which at present the sanction of the government was needed should be entirely removed to the High Court without the government having any control over them. Further, he pressed that the entire judiciary from the highest to the most junior civil Judge or magistrate should be independent and impartial. Mr. Chagis said that first class craftsmen attached to every legislature had become absolutely necessary as the drafting of the laws had been deteriorating

progressively. The chairman of the meeting at which Mr. Chagis spoke suggested that the laws and legal procedures also needed simplification. Justice would have to be less costly, cumberous and dilatory if the common man was to make full use of it and thus enjoy the fruits of democracy. He was of opinion that the salaries of the Judges should be increased as they were not enough to attract talent and competency.

In South Africa also it has been felt for some time that the Judges were underpaid. The salaries of the provincial Judges are being increased by £500 a year and those in the Appellate Division by £750—£1,000.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Owing to an oversight I have only just seen the notice of the Trust's annual report for 1957 which appears on p. 655 of your issue for October 4, 1958.

I think I should make it clear that the Trust's current rents are even now sufficient to produce a return on capital of only 1¼ *per cent.* or thereabouts, not over 2½ *per cent.* as your notice implies. To many readers such exactitude about these low percentages may seem over-nice; but they reflect important decisions of policy by the trustees which sometimes have repercussions with local authorities in connexion with those dwellings of the Trust which attract subsidy under the Housing Acts.

Yours faithfully,
C. V. BAKER,
Secretary.

The Sutton Dwellings Trust,
Victoria House,
Southampton Row,
London, W.C.1.
November 25, 1958.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

With reference to your answer to P.P. 9 on p. 690, I would venture to draw your attention to the case of *Piper* v. *Harvey* decided in the Court of Appeal which (needless to say) confirms your opinion. The case is reported in [1958] 1 All E.R. 455.

Yours faithfully,
ERSKINE POLLOCK.

Court House,
Walliscote Road,
Weston-super-Mare.

[We are greatly obliged. We ought to have remembered this decision.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PRACTICAL POINTS

It is not often I enter into correspondence in relation to opinions which appear in your paper, but I wish to draw attention to the answer given at the top of the second column of p. 708, *ante*, in which you state that the river "board's exhibition of byelaws thereon suggest that they claim ownership" of the landing place.

My board is not the one concerned in the question, but I should like to know the basis for the opinion that the mere exhibition of byelaws drawing attention to the river board's powers in relation to watercourses infers that they claim ownership. A river board does not own any land unless it has been conveyed to them, and they have no property in the banks and bed of the river unless (*a*) they have been constructed by them or (*b*) they have had the same conveyed to them or transferred to them by statutory order.

Yours faithfully,
A. W. WOOD,
Clerk of the Board.

Yorkshire Ouse River Board,
21 Park Square South,
Leeds, 1.

[We do not dissent from the last sentence of our correspondent's letter, which (incidentally) shows that a board can own land on the river bank. If it does not, its posting byelaws on that land would require the landowner's agreement since there is, so far as we have found, no statutory power to do so. The verb we used was "suggest," as correctly quoted by our correspondent in his first paragraph, not "infer," and we still think the suggestion reasonable, though not of strong evidential value.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I write with reference to your editorial in the *Justice of the Peace and Local Government Review*, at p. 693, under the heading "Call a Spade a Spade," to point out that you may have jumped to a wrong conclusion in this case. So far from the boy being led astray by language used by his elders, it may be that he is a student of an American classic known as *Huckleberry Finn*, which I expect is on most lists of the 100 best books for boys of his age. I set out below an extract from Chapter XII which may interest you:

"Every night, now, I used to slip ashore, towards 10 o'clock, at some little village, and buy 10 or 15 cents' worth of meal or bacon or other stuff to eat; and sometimes I lifted a chicken that warn't roosting comfortable, and took him along. Pap always said, take a chicken when you get a chance, because if you don't want him yourself you can easy find somebody that does, and a good deed ain't ever forgot. I never see pap when he didn't want the chicken himself, but that is what he used to say anyway.

"Mornings, before daylight, I slipped into corn-fields and borrowed a watermelon, or a mushmelon, or a punkin, or some new corn, or things of that kind. Pap always said it warn't no harm to borrow things, if you was meaning to pay them back, sometime; but the widow said it warn't anything but a soft name for stealing, and no decent body would do it."

The wording is not quite identical but very similar to the young criminal's excuse quoted by you, who must have been about the same age as Huckleberry Finn.

Yours faithfully,
M. P. WATKINS.

Vizard & Son, Solicitors,
Monmouth.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

LOCAL GOVERNMENT ACT, 1958, s. 52
Education Functions

The following information may be of interest to your readers:

This council, being the council of an urban district which is not an excepted district within the meaning of part III of sch. 1 to the Education Act, 1944, and which is an urban district with a population of more than 60,000, made application to the Minister of Education on October 9, 1958, for his direction constituting the district an excepted district. By letter dated October 24, 1958, the Minister formally directed that the urban district be an excepted district, inasmuch as the district fulfils the conditions specified in s. 52 (1) (*a*) of the Local Government Act, 1958.

The council will shortly be preparing a scheme of divisional administration, after consultation with the local education authority, the Lancashire county council. It is understood that the Minister will be issuing a circular giving general guidance on the preparation and operation of such schemes.

Yours faithfully,
D. WILLGOOSE,
Clerk of the Council.

Huyton-with-Roby U.D.C.,
Council Offices,
Huyton, Lancashire.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

THE HANDICAPPED SCHOOL-LEAVER

The British Council for Rehabilitation has set up a Working Party under the chairmanship of Dr. Elfed Thomas, director of education for the city of Leicester, with the following terms of reference:

"To investigate the needs of physically and mentally handicapped school-leavers; to study the means of meeting their difficulties and to make recommendations."

The work is expected to take about two years and will be on a nation-wide basis.

The composition of the Working Party includes educationists, representatives of the medical services, the voluntary organizations engaged in social work of an educational and medical nature, the Trades Union Congress, industry and observers from the Ministries of Education, Health and Labour and National Service, and local authorities.

While it is recognized that the statutory services provided show an enlightened approach to the problem and, as promulgated, appear to make reasonable provision, there still remain gaps to be filled. Clearly there are far too many handicapped school-leavers who, for one reason or another, miss the opportunities they should have and are left in what could become a hopeless position.

The Council would welcome evidence relevant to the above terms of reference from any source whatever. This could include any published material, the results of any private or semi-official investigations, and records of personal difficulties.

Such report and recommendations as will ultimately be made will be presented to Her Majesty's Government and all interested bodies, in order to assist in closing such gaps as do exist at the present time.

Yours faithfully,
IAN R. HENDERSON.

British Council for Rehabilitation,
Tavistock House (South),
Tavistock Square, London, W.C.1.

ANNUAL REPORTS, ETC.

COUNTY BOROUGH OF BOLTON: CHIEF CONSTABLE'S REPORT FOR 1957

The present chief constable took office during last year following the retirement of his predecessor who had held the appointment for 26½ years.

In the course of his report the chief constable asks for full co-operation from the public to enable the police to do their work with maximum efficiency. In particular he asks for prompt notification of suspicious happenings. The value of such notification is shown by details given of a number of instances in which prompt police action, mainly with the aid of wireless communications and patrol cars, followed the receipt of information and led to the arrest of offenders. Such arrests frequently took place in 10 minutes or so from the receipt of the message. The publication of such details should encourage the public to continue and to increase their assistance to the police (and to themselves) in this way.

The traffic problem here, as elsewhere, occupies much police thought and time with the need for more parking space a predominant feature.

CUMBERLAND WEIGHTS AND MEASURES DEPARTMENT

The new type of weighbridge testing unit has proved its value and a note in the annual report of Mr. A. Garratt, chief inspector to the Cumberland county council, provides further evidence. He says that in the year under review it was possible for the first time to test the machines with a load of 20 *tons*. In consequence the number of rejections was high. An advantage of the unit is that the actual tests can be completed in a much shorter time than those made by the obsolete method of using 56 *lb*. weights.

Of 14,679 weights tested, 158 failed to pass the test. Of 5,797 weighing instruments tested 345 failed. Of 33,464 measures, 55 failed and of 634 measuring instruments 77 failed. Fair wear and tear was the cause of the errors in most of these instances. Of 36,277 articles of food examined, 1,042 were deficient in weight or measure and 66 were incorrect in other respects. In the case of pre-packed foods of 8,315 articles examined 31 were incorrectly marked.

The voluntary scheme concerning the standards to fill for canned fruits and vegetables remains in operation. Regular visits are made to canning premises in West Cumberland, reports of which are forwarded to the Fruit and Vegetable Canning and Quick Freezing Association. Agreements have been entered into with the city of Carlisle and the counties of Northumberland, Westmorland and Lancashire, under which the county boundaries will no longer prevent any effective intervention on the part of inspectors where offences are found, the circumstances of which extend into a neighbouring territory.

The statistics about coal and coke show that of 42 loads re-weighed two were incorrect and of 1,877 sacks re-weighed, 147 were found to be deficient in weight. Two hundred and twenty-seven sacks were not correctly labelled.

COUNTY BOROUGH OF MIDDLESBROUGH: CHIEF CONSTABLE'S REPORT FOR 1957

The chief constable is able to report "continued success in recruiting," the figures being 64 "in" and 31 "out" during the year, a net gain of 33. Of the losses 21 were due to the resignation of probationers, mostly married men with families who said that they could not manage on the pay of a probationary constable. On December 31, 1957, the authorized establishment (which was increased in April, 1957) was 292 and the actual strength was 271. Five further appointments of women constables in January, 1958, brought the strength up to 276.

The increase in strength is very welcome because crime has also increased. The 1957 figures show 2,723 recorded crimes with 1,720 detected and 757 persons prosecuted. The corresponding figures for 1956 were 2,341, 1,513 and 662.

Juvenile crime increased, 422 juveniles being responsible for 767 detected crimes compared with 356 for 464 in 1956. It is noted as a disturbing feature that 225 breaking offences were included in the 767 and that many of these were committed so expertly that the police found it hard to judge whether juveniles or adults were responsible. The police noted that the absence of effective parental control and the bad effect of defective family relationships were predominant causes of juvenile crime.

By contrast, there was a drop from 2,750 to 2,431 in the number of persons dealt with for non-indictable offences. It is said to be evident that the motoring public are continuing to respond very well to the policy, introduced last year, of giving advice and warning whenever circumstances warrant this procedure.

CHICHESTER RURAL DISTRICT FINANCES, 1957–58

Mr. A. R. Hayman retired from the treasurership of Chichester rural district council on March 31, 1958, and has been succeeded by Mr. W. E. B. Buckingham, A.S.A.A., who has published and presented the accounts of the last year during which Mr. Hayman held office. The abstract has been wholly prepared in the treasurer's office: it compares in all respects very satisfactorily with a printed volume and, of course, has cost much less.

The population of the area continues to grow, the latest estimate exceeding 48,000. Rates increased by 1*s*. 5*d*. to 14*s*. 4*d*. the rise being almost wholly due to the larger demands of the West Sussex county council. A penny rate produced £2,876 and the average ratepayer in the rural district, living in a house of £30 rateable value, was required to pay rates of 8*s*. 3*d*. weekly.

Reports of landslide, cliff falls and the like serve to remind those living in more sheltered areas of the perils (and extra expenditure) peculiar to certain places. Chichester is an area where coast protection costs have been quite heavy: at March 31 loan debt outstanding was £183,000 and annual loan charges £14,700.

The chairman of the finance committee, Mr. H. H. Lenton, is doubtless well satisfied with the financial position of the authority, there being at March 31 a balance in hand on general district account of £44,500, most of which was held as cash.

Rents of post war houses vary from 20*s*. for two bedroom houses to 30*s*. 3*d*. for the largest provided. Three bedroom non-parlour houses cost 21*s*. 9*d*.: those with parlour 2*s*. more. A surplus of £17,600 was carried forward on the housing revenue account.

In regard to this service, as with the others for which the council is responsible, the accounts reflect sound and successful administration.

NORTHAMPTONSHIRE PROBATION REPORT

A substantial increase in the number of probationers is reported for the year 1957 as compared with 1956: current orders are up by 34, and this has necessitated the appointment of a new officer.

For a quiet and stable part of the country this is a substantial increase, and a vivid reflection of the disquieting trend in crime as a whole.

Much of the report is devoted to an interesting discussion of after-care work. As is pointed out, this part of probation work is carried on away from the notice of the magistrates, but it is none the less exacting from the point of view of the probation service, and frequently involves very troublesome problems. When one considers that people on licence after release from approved schools, borstal institutions, young persons' prisons, corrective training establishments, and preventive detention prisons, are all eligible for this form of supervision, one realizes what a lot of work must be involved. For, as the report says: "The aim of the probation officer during this licence period is to assist the person concerned to settle down in ordinary life again, and to assist him or her, in every possible way, to make the most of such training as has been given in the institution." That is a tall order, particularly as it involves finding homes for homeless boys or girls, described here as "a challenge to the charitable feelings of the community that few of us like to face."

One would like to see some form of legislative development which would bring this important work within the ambit of the magistrates of the petty sessional division concerned.

It is all too easy for magistrates and clerks to the justices to think of probation work simply in terms of the defendants and applicants who come personally before the courts. In point of fact, they represent only a part of the probation officers' duties, and it is hard to see how the functions of magistrates' courts' committees, *vis-à-vis* the probation service, can be adequately and sympathetically discharged unless the full scope of probation work is constantly present in their minds.

PEWSEY RURAL DISTRICT ACCOUNTS, 1957–58

Housing is the major service provided by county district councils: this fact is well illustrated in the Pewsey accounts presented by the treasurer, Mr. I. W. Jones, A.C.C.S. The council own 991 dwellings, and housing loan debt is £1,160,000 out of a total owing of £1,298,000.

Next in importance in rural districts is water and sewerage. Pewsey have just started work on the last major stage of their water scheme but now see the possibility of losing their undertaking by amalgamation. On this the clerk (Mr. F. H. M. Sargent, LL.B., D.P.A.) writes, "The feeling in some quarters is that the Ministry (as opposed to the Minister) is adopting a doctrinaire attitude and is determined to force the issue whether the circumstances favour amalgamation or not. The council are satisfied that they have adequate resources of water and can efficiently and economically administer the undertaking and are therefore strongly opposing amalgamation."

The accounts and statistical statements are clear and well presented: they reflect the progressive policy of the council in providing services for the population of 18,000.

KENT COUNTY CONSTABULARY: ANNUAL REPORT FOR 1957

Although there was a net gain in strength during the year of 11 men, compared with a loss of 22 in 1956 and of six in 1955 the force still remains well below its authorized establishment. The final figures were 1,743 men and 45 women authorized and 1,541 men and 32 women actual strength. The special constabulary numbered 1,863 and of these 527 were regularly employed on police duty. Police dogs produced information which was of great assistance in a number of the 235 cases they were called out for. These included 15 of burglary, 49 of housebreaking and 69 of other breaking offences.

The holders of justices licences in Kent, are extremely law abiding. With 2,619 publican's or beer house licences there was only one conviction of a licensee for any offence against the licensing laws. There were 84 prosecutions for driving, or being in charge of, motor vehicles while under the influence of drink. Of the 66 dealt with summarily 59 were convicted. Eighteen elected to go for trial and seven of these were acquitted. One case was, at the time of the production of this report, still undecided.

As a supplement to the report is published "Road Accidents in 1957." This gives a wealth of detail about the 13,112 accidents recorded in Kent during 1957, a decrease of 1,057 on the 1956 total. The chief constable suggests that real improvement in the position can come only through "education, engineering and enforcement."

Much labour must have gone into analyzing and presenting the figures in this 29 page report. We cannot help wondering whether so much detail is necessary; whether the reliable conclusions that can be drawn from it justify the labour expended.

SALFORD PROBATION REPORT

Mr. S. Musk, formerly senior probation officer for the city of Salford, makes his report for the year 1957–58 as principal probation officer, the creation of the higher post having been authorized during the year.

There seems to be a desire on the part of many officials to obtain appointments in the southern parts of the country rather than in the industrial areas further north, and Mr. Musk paints rather a gloomy picture of the position of the probation service in Salford. The supply of officers having the necessary qualifications or experience falls short of the demand throughout the country, and Mr. Musk says that something like cut-throat competition has been witnessed. So far as the "better areas" were concerned, even they found it necessary to advertise and exploit their special incentives (assistance with cars, naming famous beauty spots and seaside resorts in their advertisements). He goes on: "The densely populated and heavily industrialized areas of the northern counties suffered in consequence becoming victims of a mass exodus of many of their officers to these "better areas," and in the complete absence of trained or experienced applicants, they were obliged to fill most of their vacancies from persons with no sort of knowledge or understanding of the work." To make matters worse, such officers, when they have gained some experience and knowledge by being tutored in Salford or similar places, tend to transfer to "better areas" as soon as an opportunity presents itself

One result of this situation has been that the programme of "deep case work" begun in 1956, had to be discontinued.

The question how far this shortage of trained officers affects the numbers of successes and failures in probation cases is suggested by Mr. Musk as follows: "Our statistics relating to 'lapsed cases' show that of a total of 238 such cases during the past year, no less than 42 (18 *per cent.*) were re-convicted and sentenced to institutional training (Home Office schools, borstals and prisons). This compares very unfavourably with the national average of 5·6 *per cent.* and there is some consistency with the previous year when our 14 *per cent.* compared with 6·7 *per cent.*"

The percentage of probation orders made in the case of juveniles fell from 72 to 64 *per cent.* compared with the previous year. This appears to be accounted for by an increase in the use of probation for adults rather than any decrease in its use for juveniles.

BOROUGH OF CASTLEFORD FINANCES

His many local government friends will be glad to see from the title page of the Castleford Abstract of Accounts that Alderman Ezra Taylor, M.B.E., J.P., continues his valuable work as chairman of the finance committee of this Yorkshire town and that he can still call on borough treasurer J. W. Bromley, A.S.A.A., A.I.M.T.A., for advice.

The volume, produced on a duplicator, is of pocket size, excellently set out and cost to produce about 1*s.* 6*d.* a copy, plus labour. It contains four years' expenditure plus the current year's estimates. In addition it is prefaced by a really excellent report from the treasurer.

Castleford has a population of 42,000. A penny rate produces £1,260, and rates levied in 1957–58 totalled 21*s.* of which 9*s.* 6*d.* was for West Riding county council.

Loan debt amounted to £4¼ million of which £4¼ million was for housing.

The borough possesses a very useful balance of £50,000 on general fund, and evidence of substantial financial provision is available in other balances held.

The treasurer truly says that the housing account constitutes the biggest single problem to the corporation, involving large financial and human problems. A contribution from rates is still made to the housing revenue account, but there was a surplus of £24,000 at the year end, possibly due to the rent revision made from April 1, 1957. Weekly rents are now 8*d.* per £1 gross value for pre-war houses and 10*d.* for post-war.

The corporation owns two cemeteries, waterworks, markets and a transport undertaking. As is common nowadays the cemeteries cannot be made self-supporting but markets and transport have produced surpluses and water charges have been increased (domestic charges by 10 *per cent.*) to meet a deficit on that account.

The corporation have a direct labour department whose activities include house building. Expenditure in the three years to March, 1958, was £1,212,000.

TAKING THE FAT WITH THE LEAN

"Laugh and grow fat," says the proverb; and Christmastide, with its wholesome fun and good things to eat and drink, is as apt a time as any to recall it, "Stoutness—in moderation" (as the Fairy Queen in *Iolanthe* puts it)—is associated in most people's minds with a jovial character and an equable temperament; the converse, too, applies, and we are inclined to find an anxious disposition and a jaundiced outlook among those who are bony, thin and gaunt. Which is cause and which effect, we do not stop to inquire; does that well-fed look and multiplicity of chins manifest itself because the subject is satisfied with life? or does his complacency arise from his healthy and robust appearance? Is the cadaverous man so because he is worrying the flesh off his bones? or is his skeleton-frame one of the contributory causes of his miserable aspect and downcast mien? Nobody knows, and few people did more than to observe the association between physique and temperament until (writes *The Times* correspondent) "the publication of Kretschmer's classical work, in 1925, led doctors and scientists to make a serious systematic study of the subject." We reluctantly confess that we had never heard of Kretschmer, or his classical work, until we read the recent article. Nor did we know that, "some 15 years later, Sheldon and his associates in the United States produced a classification of physique far in advance of anything previously put forward, which has placed the subject on a sound scientific basis." We had heard the strong views that Shakespeare attributes to Julius Caesar:

> "Let me have men about me that are fat—
> Sleek headed men, and such as sleep o' nights.
> Yond' Cassius hath a lean and hungry look—
> He thinks too much; such men are dangerous."

But then Hamlet, on the other hand, was "fat and scant of breath" (so his mother remarks, in the fencing scene); yet nobody could accuse him of excessive cheerfulness or lighthearted gaiety, what with his soliloquies on suicide, his heartless behaviour to Ophelia, his Oedipus-complex and his psychopathic reactions. Evidently the rule is not invariable.

Be that as it may, the learned Sheldon has classified human bodies (*somatypes*) in terms of three components—*endomorphy*, *mesomorphy* and *ectomorphy*. *Endomorphy* concerns "the degree of roundness of physique and ability to put on weight; the endomorph is therefore the fat individual, with limbs which are short and tapering, and small hands and feet." (This is going one better, even, than Discontented Sugar-Broker in W. S. Gilbert's *Bad Ballads*:

> "His bulk increased—no matter that—
> He tried the more to toss it:
> He never spoke of it as, 'fat,'
> But 'adipose deposit.'
> Upon my word, it seems to me
> Unpardonable vanity
> (and worse than that)
> To call your fat
> An 'adipose deposit.'")

However, *revonons à nos moutons*. "*Mesomorphy* describes the degree of bone and muscle development, and the typical mesomorph is the square, rugged-looking heavily muscled individual. *Ectomorphy* describes the linearity of the build; and the classical ectomorph is the long, lean, lanky fellow." So now we know. This classification has been recently improved upon by a series of measurements of fat, masculinity and linearity, represented respectively by the letters F.M.L. "Primary dominance of a characteristic is indicated by these capital letters, secondary dominance by small letters—for example, Fm, Ml, Lf."

The latest approach is "to rely upon the use of precise—physical measurements for the assessment of mental and emotional capabilities of the individual." The experts investigated 208 university students, "advised to attend a mental hospital for consultant psychiatric opinion." When these were compared with 405 healthy students, striking differences were found. "The tall man of poor musculature, and with an average amount of fat, was six times more common among the mentally ill students; whereas the short, rather muscular man, with an average amount of fat, was five times more common among the healthy student. Further investigation showed a high susceptibility to mental breakdown among those classified as Lf;" but the risk fell rapidly in older Lf men; after the age of 45, it was comparatively small; whereas the number and proportion of Ml men preponderated in the older age-group. *Fat (f) men formed a smaller proportion of mental hospital admissions as they matured.* Most of the schizophrenics under the age of 20 were Lf; but they seemed to become more stable as they grew older. Depression, especially among the over-35s, was more common in the Mf type.

These findings are only preliminary; but, "taken in conjunction with other observations correlating physique with intelligence, academic aptitudes, character traits and suicide," they suggest considerable potentialities for the early detection and prevention of mental breakdown. *There is also a certain tendency for delinquents to belong to the Mf type.* "This" (we were about to remark, irreverently, in the words of the cinema-goer) "is where we came in." Our guides on the rugged footpaths of criminal law—particularly the beloved Professor Kenny—used to talk about a certain Cesare Lombroso whose ideas (we are told) were out of date, and many of them discredited. He was famous in his day for demonstrating that the criminal population exhibits a high percentage of physical, mental and nervous anomalies, due (he believed) partly to degeneracy and partly to atavism; "the criminal is a special type standing midway between the lunatic and the savage." Lombroso, in turn, harks back to the positivist philosopher Auguste Comte, who had a disturbing tendency to refer mental facts to biological causes. Though he himself suffered a mental breakdown at the age of 28, he pursued in later life a practice (termed by him *hygiène cérébrale*) which seems to us eminently sound and reasonable. This was to abstain from reading newspapers, reviews, scientific treatises, and everything else that might distract his mind from philosophic reflexion, except the works of Dante and of Thomas à Kempis. Both these writers well exemplify the basic sanity and wisdom of, the irrational, intuitive, imaginative approach proclaimed in Shakespeare's immortal words:

> "The lunatic, the lover and the poet
> Are of imagination all compact.
> One sees more devils than vast hell can hold—
> That is the madman; the lover, all as frantic,
> The poet's eye, in a fine frenzy rolling,
> Doth glance from heaven to earth, from earth to heaven;
> And, as imagination bodies forth
> The forms of things unknown, the poet's pen
> Turns them to shapes, and gives to airy nothing
> A local habitation and a name."

And, with that paradox, the wheel has come full circle in our day.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons Act, 1933—*Fine—Enforcement—Young person in approved school.*

When an adult is committed to prison for an offence, it is in order also to commit for appropriate concurrent terms in respect of unpaid fines.

A child or young person may be committed to a detention centre or, where there is not one, to a remand home, for a term not exceeding one month in default of payment of a fine or fines.

A young person has been found guilty of an offence and, having regard to his record, will probably be the subject of an approved school order. The offender owes outstanding fines, which he was personally ordered to pay.

If the young person is committed to an approved school, is there any comparable method by which the fines can be similarly disposed of ?

UWITA.

Answer.

Section 70 (1) of the Magistrates' Courts Act, 1952, permits a court to commit an adult offender to prison for non-payment of a fine without inquiry into his means, where the offender is in prison. There is no comparable method of committing a young person to a detention centre or to a remand home when he has been ordered to be sent to an approved school.

Unless the court considers that the young person should pay the fines after his release from the school, application might be made to the Secretary of State, Home Office, to give authority for the fines to be written off as irrecoverable.

It should be noted that a child cannot be sent to a detention centre, and that the period of detention of a young person in such a centre is prescribed by s. 18 of the Criminal Justice Act, 1948, and is not limited to one month.

2.—Gaming—*Small Lotteries and Gaming Act,* 1956—*Registration of Owner-Occupiers' Association.*

I have received an application under the Small Lotteries and Gaming Act, 1956, from the social committee of the owner-occupiers association of a large housing estate in my area. The objects of this association are to promote and safeguard the interests of owner-occupiers. Membership is available to all owner-occupiers of the estate. I should be grateful for your opinion on the eligibility of the application under s. 1 of the Act.

GORAN.

Answer.

We answered a similar query at p. 46, *ante*. We see no reason to alter what we said there, except to add that the objects of the association in the present case seem to be less narrowly defined and we would have less hesitation in thinking that it could properly be registered.

3.—Justices' Clerks—*Fees—Committal warrant to enforce payment of a fine—Liability of prosecutor to pay fee ?*

May I refer to P.P. 5 at 122 J.P.N. 707, which appears to conflict with the answer given to P.P. 6 at 121 J.P.N. 700 ?

Your observations will be much appreciated.

MIDAS AGAIN.

Answer.

We regret the inconsistency of the two answers. In answering the more recent question we overlooked that we had dealt previously with the same point. On reconsideration, we think that the later answer is the correct one, although we cannot say that the point is free from doubt.

4.—Landlord and Tenant—*Apportionment of rateable value—Can local authority apply ?*

We have been consulted by a local authority within whose district is a house which has been divided into seven or eight flats, which are let by the owner at a rent which includes payment for the use of furniture and services. Before the coming into operation of the Rent Act, 1957, the local authority referred each contract for the letting of the individual flats to the tribunal for the district under the Furnished Houses (Rent Control) Act, 1946, and in pursuance of the reference the tribunal fixed the reasonable rents and we believe in every case reduced the rent fixed by the contracts. The local authority have now discovered that the owner is charging more than the rent fixed by the tribunal for a number of the flats, and wish to bring proceedings against the owner under s. 9 of the Act of 1946. The rateable value of the whole property is about £100, and no separate assessments of the individual flats have been made. The local authority feel that if separate assessments were made the rateable value of each flat would be less than £30. Section 12 of the Rent Act, 1957, provides that the Act of 1946 shall not apply if the rateable value of the property concerned exceeds £30 and para. 1 (*b*) of part I of sch. 5 provides that the rateable value of each flat is to be such proportion of the rateable value of the whole hereditament as may be agreed in writing between the landlord and tenant or determined by the county court.

No agreement has been reached between the owner and any tenant of the flats concerned as to the rateable value to be assigned to any flat. The tenants of the flats are only in the district for a short period, and the local authority believe that no tenant would wish to go to the trouble of making application to the county council for apportionment. We can find no provision which enables the local authority to make application to the county court of its own motion for apportionment. Section 19 (1) of the Rent Act, 1957, seems to limit the right to apply for apportionment to the landlord or tenant alone. In your view can the local authority prosecute the owner with any chance of success before an apportionment has been made ? If not, can you refer us to any provision which enables the local authority to apply for apportionment ?

BASKEN.

Answer.

We agree that s. 19 of the Act of 1957 precludes the council from seeking an apportionment for purposes of the Act of 1946. We have considered whether they could achieve the result, after an interval, by making a proposal in their capacity of rating authority, but this seems at best doubtful: in *Grainger* v. *Liverpool Corporation* (1954) 118 J.P. 136; [1954] 1 All E.R. 333, Lord Hanworth tied their power of doing so, since the Local Government Act, 1948, to correcting inequality or under-assessment known to them.

We think an information could be laid, as in the last paragraph of the query, upon the footing that the burden of proving that the Act of 1957 has taken the premises out of the earlier Acts rests upon the owner. But we hesitate to say that such proceedings would be likely to succeed.

5.—Licensing—*"Wine-tasting" on off-licensed premises—Supply of free samples—whether lawful.*

Owing to the prevalence in this neighbourhood of wine-tasting parties on licensed premises, I have been asked to advise on the following question, and I cannot find any direct authority thereon.

A limited company are grocers with an off-licence entitling them to sell spirits, liqueurs, wine and beer under the normal conditions of a grocer's off-licence.

The company are desirous of organizing wine-tasting during several days in one week for the purpose of advertising the wines sold by them under their present licence. The idea is that they should send out notices to all their customers and probably to others inviting them to attend at the shop on the days in question where they will be entitled in the shop premises to taste wine which will be supplied to them without any charge whatever. The exact hours during which the wine-tasting would be carried on has not yet been definitely decided.

Is such a proceeding as indicated above permissible, or is carrying it out an offence ?

OPAGA.

Answer.

We answered a similar question at 121 J.P.N. 60. In our opinion, and for the reasons set out in our previous answer, we think that it would be held that the transaction mentioned by our correspondent is a "transaction in the nature of a sale" and so a "sale" within the meaning of s. 154 (1) of the Licensing Act, 1953: if it were so held the consumption of the wine on off-licensed premises would be a contravention of s. 124 (1) (*a*) of the Act.

6.—Probation—*Breach of requirement of probation order—Separate information in respect of each requirement.*

Subsection (1) of s. 6 of the Criminal Justice Act, 1948, dealing with initial consequences of breach of requirement of a probation order, uses the words "any of the requirements of the order."

Subsection (3) of the same section, prescribing the ways in which the defendant may be dealt with, uses precisely the same words.

Subsection (4) (*a*) of the same section refers to "such of the requirements of the probation order" as may be specified in the certificate, which, in appropriate cases, a magistrates' court must send to the court of Assize or quarter sessions, while subs. 4 (*b*) reverts to the words of subss. (1) and (3).

Subsection (5) refers to a fine being imposed in respect of a failure to comply with "the requirements of a probation order."

I assume that you will accept that the words "any of the requirements" means "any *one* of the requirements," the word "any" being a singular pronoun. In the subsections quoted where that word does not appear, then obviously, I think, the plural is intended.

It seems to me that where a person is required by a probation order, say, to report to the probation officer at certain intervals, and to notify the probation officer of a change of address, and he fails in each of these, a separate information should be laid in respect of non-compliance with each requirement. This would, of course, lead to a separate adjudication having to be made by the court on each information, and, if convicted, the defendant could be fined on one and sentenced for the original offence in respect of the other.

Do you agree with this?

FALFOR.

Answer.

We do not accept the proposition that the words "any of the requirements" mean "any one of the requirements." We might be prepared to say that the phrase "any requirement" implies only one, but the phrase used is "any requirements" which, in our view, can be singular or plural.

In theory, a separate information in respect of each requirement broken could be laid, but, if this is done, the court should be prepared to face the consequences of treating the breach of several requirements as separate offences. We do not think that any court, for instance, would sentence an offender to £10 or two months' imprisonment in default in respect of each of two breaches and two months' imprisonment for the original offence, all the sentences to be consecutive, where the maximum penalty for the original offence was, say, three months' imprisonment. We feel sure that s. 6 of the Act was intended to allow the Court to sentence a probationer for the original offence if probation breaks down or, in suitable cases, to let the order continue and fine him up to £10 for failing to comply with the order in one or more respects.

7.—Public Health Act, 1936, s. 72—*House refuse—Waste paper and the like.*

I shall be much obliged if you could refer me to any case which has defined the words "house refuse." As you know, there is no definition in the Public Health Act, 1936. Do you think that a byelaw could be made under s. 72 (3) of the Public Health Act, 1936, prohibiting the deposit of waste paper, newspapers, cardboard boxes, and similar things in dustbins?

DIDO.

Answer.

The effect of the decisions, including those under the London law, can be summarized as being that house refuse is refuse of the sort normally produced by a household, even though the premises are commercial: *see* the list of things in *Lyons & Co.* v. *London Corporation* (1909) 73 J.P. 372; *cp.* 117 J.P.N. 356 and 679. The objects now mentioned can clearly not be prohibited. *See* also *Lumley's* note (*e*) on s. 72 (3). Theoretically it might be possible, as there suggested, to make a byelaw under para. (*d*) in the subsection, requiring the householder to put these objects into a separate dustbin. Clean waste paper was separated during the war, and some local authorities still collect it separately from dirty refuse, but we doubt whether a byelaw requiring this would be enforceable in practice, or would be confirmed by the Minister.

8.—Open Space—*Disused burial ground—Interment of cremated remains.*

Some time ago, by virtue of a certificate given under the Burial Act, 1855, and of s. 269 (*a*) of the Local Government Act, 1933, the functions and liabilities of the parochial church council with respect to the maintenance and repair of a churchyard closed for burials by Order in Council were transferred to the local authority. By a faculty the latter were authorized to remove headstones, level the churchyard, plant trees and shrubs, alter or construct pathways, provide seats, and do such other acts as may be suitable or desirable in order to maintain the churchyard as an open space within the meaning of the Open Spaces Act, 1906. No byelaws have been made. The parochial church council have now asked whether the local authority will permit the interment in a selected part of the churchyard of caskets containing cremated remains, and the placing of commemorative tablets level with the surface of the ground, the area in use for such interments to be enclosed with dwarf posts and chains. It is understood that the interment of cremated remains is not considered to be a burial of human remains within the meaning of the Burial Acts. The parochial church council understand that a faculty would be needed, but the question arises: Is it within the power of the local authority to give such permission, in view of s. 10 (*a*) of the Open Spaces Act, 1906, which says that they are to hold and administer such a burial ground with a view to the enjoyment of the public as an open space within the meaning of the Act, under proper control and regulation, and for no other purpose.

BAROM.

Answer.

For the proposition that placing human ashes in the earth is not a burial in the present sense, *see* P.P. 1 at 121 J.P.N. 27: *see* also article, *ibid*, p. 7. That Practical Point did not raise the present query about the Open Spaces Act, 1906. It could be argued that the present suggestion is not inconsistent with "enjoyment by the public," because s. 10 of the Act speaks of "enjoyment" of a burial ground, and therefore that the local authority can lawfully agree, if so minded. On the other hand, it is one thing for the public to take over and enjoy a disused burial ground, with the graves already in existence, and a different thing to withdraw from public use a piece of ground now open to the public, and divert that piece to a use which *pro tanto* excludes the public. On the whole, we think the local authority would be wiser not to accept the suggestion.